

FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID L. CUMMIN, M.D., *et al.*

Plaintiffs,

v.

LANNY NORTH, *et al.*

Defendants.

Case No. 2:15-cv-1043

Judge Sargus

Magistrate Judge King

PLAINTIFFS' NOTICE OF SERVICE OF SUBPOENA

Plaintiffs, by and through their undersigned counsel, hereby provide notice of serving a subpoena on Keller Blackburn to attend and give testimony at a deposition. A copy of the subpoena is attached hereto as **Exhibit 1**.

Respectfully submitted,

BRUNNER QUINN

/s/ Rick L. Brunner

Rick L. Brunner (0012998)

Email: rlb@brunnerlaw.com

Patrick M. Quinn (0081692)

Email: pmq@brunnerlaw.com

BRUNNER QUINN

35 North Fourth Street, Suite 200

Columbus, Ohio 43215

Telephone: (614) 241-5550

Facsimile: (614) 241-5551

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was filed with the Court's electronic filing system this 19 day of August 2016, which will send electronic notice to the following

Randall L. Lambert, Esq.
Lambert Law Office
215 South Fourth Street
P.O. Box 725
Ironton, Ohio 45638
Email: rlambert@lambert-law.org.
Attorney For Defendants

Lawrence Barbieri, Esq.
Schroeder, Maundrell, Barbieri & Powers
5300 Socialville-Foster Road
Suite 200
Mason, Ohio 45040
Email: lbarbieri@smbplaw.com
Attorney for Defendant Edwin Downs

J. Stephen Teetor, Esq.
Aaron M. Glasgow, Esq.
Isaac Wiles Burkholder & Teetor
Two Miranova Place, Ste. 700
Columbus, Ohio 43215
Email: steetor@isaacwiles.com
Email: aglasgow@isaacwiles.com
Attorney for Defendant David Valkinburg

/s/ Rick L. Brunner
Rick L. Brunner (0012998)

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID L. CUMMIN, M.D., *et al.*

Plaintiffs,

v.

LANNY NORTH, *et al.*

Defendants,

Case No. 2:15-cv-1043

Judge Sargus

Magistrate Judge King

SUBPOENA TO ATTEND AND GIVE TESTIMONY AT A DEPOSITION

TO: Keller J. Blackburn, Esq.
Athens County Prosecuting Attorney
1 South Court Street, First Floor
Athens, Ohio 45701
Email: keller.blackburn@athenscountypProsecutor.org
Facsimile: (740) 592-3291

YOU ARE HEREBY COMMANDED TO:

 X Attend and give testimony at a deposition on the date, time and place specified below.

 X Produce at the time, date and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

DATE: **Thursday, September 15, 2016** TIME: **10:00 a.m.**

PLACE: 1 South Court Street Athens, Ohio 45701

The following provisions of Fed. R. Civ. P. 45 are attached -- Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Case No. 2:15-cv-1043

BY: _____
Plaintiffs

Signature of: Rick L. Brunner Attorney for

The name, address, email address, and telephone number of the attorney representing Plaintiffs who issues or requests this subpoena are:

NAME: Rick L. Brunner, Attorney for Plaintiffs
ADDRESS: 35 North Fourth Street, Suite 200, Columbus, Ohio 43215
EMAIL: rlb@brunnerlaw.com
TELEPHONE NUMBER: (614) 241-5550
ATTORNEY CODE: 0012998

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45)

I received this subpoena for Keller J. Blackburn, Esq. on 8/15, 2016.

☒ I SERVED THE SUBPOENA BY DELIVERING A COPY TO THE NAMED PERSON AS FOLLOWS:
via certified mail on 8/16, 2016; OR

☐ I WAS UNABLE TO COMPLETE SERVICE FOR THE FOLLOWING REASON AND RETURNED THE SUBPOENA UNEXECUTED BECAUSE:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$_____.

My fees are \$_____ for travel and \$_____ for services, for a total of \$_____.

I declare under penalty of perjury that this information is true.

Date: 8/19/16

(Server's Signature)

(Print Name and Title)

(Address)

Additional Information regarding attempted service, etc.:

Case No. 2:15-cv-1043

FEDERAL RULE OF CIVIL PROCEDURE 45 (c), (d), (e), and (g). (Effective 12/1/13)**(c) Place of Compliance.**

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is

employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated

in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for

Case No. 2:15-cv-1043

it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the

information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

DISCOVERY EXHIBIT A

Page 1 of 1

Kelly Post

From: "Keller Blackburn" <keller.blackburn@athenscountyprosecutor.org>
Date: Monday, March 28, 2016 2:17 PM
To: "Zach Saunders" <zach.saunders@athenscountyprosecutor.org>
Attach: Scanned-image-115.pdf; Untitled attachment 00087.htm
Subject: Fwd: Attached

This message was originated on my iPhone, please excuse any spelling and grammar errors.

Begin forwarded message:

From: Sheriff Lanny North <Sheriff@co.hocking.oh.us>
Date: March 4, 2016 at 12:00:27 PM EST
To: "keller.blackburn@athenscountyprosecutor.org"
<keller.blackburn@athenscountyprosecutor.org>
Subject: Attached

We have a hearing scheduled for March 18 and one issue is the intimidation issue, the reason for the time-line I put together.
Attached is the hearing notice.

Just thought I would share with you.

Lanny

DISCOVERY EXHIBIT B

HOCKING COUNTY MUNICIPAL COURT

1 East Main Street, Logan, Ohio 43138

(740) 385 2250

([HTTP://www.hockingcountymunicipalcourt.com](http://www.hockingcountymunicipalcourt.com))

State of Ohio/City of Logan

Plaintiff

Case No.: CRB 1400713 A

Vs.

DAVID L CUMMIN

11423 HELBER RD

LOGAN, OH 43138

Defendant

Judge Frederick T. Moses

Summons Upon Complaint

COPY TO SERVE

FILED

JUL 23 2014

HOCKING COUNTY
MUNICIPAL COURT

FORM VI

TO THE ABOVE NAMED DEFENDANT:

A Complaint, a copy of which is attached hereto, has been filed in the above named court charging you with the following:

2921.31 OBSTRUCTING OFF

You are hereby summoned and ordered to appear in this Court on 08/11/2014 at 08:15 AM.

Date: July 23, 2014

Michele Bell

Clerk of Court

Cindy L Koster

By
Clerk/Deputy Clerk

**TO: HOCKING COUNTY SHERIFF
RETURN OF SERVICE**

PERSONAL

Received this writ on _____ at _____ o'clock __m, and served the same by personal service on _____, at _____.

FAILURE OF SERVICE

Received this writ on _____ at _____ o'clock __m, and was unable to serve the same for the following reason _____

FEES

SERVICE

\$

MILES

\$

TOTAL

\$

By _____

Officer Serving Writ

HOCKING COUNTY MUNICIPAL COURT
HOCKING COUNTY, OHIO

State of Ohio
/City of Logan/

v.

David L. Cummin

name

11423 Helber Road

street

Logan

city

Ohio

state

43138

zip

NO.

CRB 1400713A

FILED

JUL 23 2014

HOCKING COUNTY
MUNICIPAL COURT

Complainant being duly sworn states that David L. Cummin

defendant

at 15780 State Route 678 Hocking County, Ohio on or about July 19, ,2014
place

did, No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties; to wit: Coroner Cummin told Commissioner Walker that he didn't have any money in the lab/morgue and would not send the body for autopsy until he had it in writing that the commissioners would transfer the money into that fund.

in violation of Section 2921.31 of the Ohio Revised Code.

Obstructing Official Business
M-2

Det. Sgt. Ed Downs
Complainant

Sworn to and subscribed before me by Detective Sergeant Ed Downs on July 23 ,2014

/ Judge / Clerk / Deputy Clerk /
Hocking County Municipal Court

or

[Signature]
PEACE OFFICER

Authorized To Administer Oaths Pursuant to ORC 2935.081

DISCOVERY EXHIBIT C

HOCKING COUNTY MUNICIPAL COURT
HOCKING COUNTY, OHIO

State of Ohio
/City of Logan/

v.

David L. Cummin

name

11423 Helber Road

street

Logan

city

Ohio

state

43138

zip

NO.

CRB 1400 713 B

FILED

JUL 23 2014

HOCKING COUNTY
MUNICIPAL COURT

Complainant being duly sworn states that David L. Cummin
defendant

at 15780 State Route 378 Hocking County, Ohio on or about July 19, 2014,
place

did, No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office; to wit: Coroner David L. Cummin did knowingly and recklessly leave Hocking County without any Coroner coverage on July 19, 2014 through July 20, 2014, thus resulting in failing to respond to the scene of a double shooting with one person deceased because he was not in town and told a Commissioner that he didn't have any money in the lab/morgue and would not send the body for autopsy until he had it in writing that the commissioners would transfer the money into that fund.

in violation of Section 2921.44E of the Ohio Revised Code.

Dereliction of duty
M-2

Det. Sgt. Ed Downs
Complainant

Sworn to and subscribed before me by Detective Sergeant Ed Downs on July 23, 2014

/ Judge / Clerk / Deputy Clerk /
Hocking County Municipal Court

or

[Signature]
PEACE OFFICER

Authorized To Administer Oaths Pursuant to ORC 2935.08.1

Case No. 2:15-cv-1043

Exhibit 1

1. The “time-line” that Defendant Lanny North describes in the email attached hereto as **Discovery Exhibit A.**
2. Any and all documentation related to, concerning or in any way dealing the follow five matters, including but not limited to email communications and letters or forms of communications about:

Discovery Exhibit B. Hocking County Municipal Court case number 1400713 (A)

Discovery Exhibit C. Hocking County Municipal Court case number CRB1400713 (B)

Discovery Exhibit D. Hocking County Municipal Court criminal case number CRV1400713(C)

Discovery Exhibit E. Hocking County Municipal Court case number CRB1400714

Discovery Exhibit F. Hocking County Municipal Court case number CRB1400715

DISCOVERY EXHIBIT D

DISCOVERY EXHIBIT E

COPY TO SERVE

HOCKING COUNTY MUNICIPAL COURT

1 East Main Street, Logan, Ohio 43138

(740) 385 2250

([HTTP://www.hockingcountymunicipalcourt.com](http://www.hockingcountymunicipalcourt.com))

FILED

State of Ohio/City of Logan

Plaintiff

Vs.

DAVID L CUMMIN
11423 HELBER ROAD
LOGAN, OH 43138

Defendant

Case No.: CRB 1400714

Judge Frederick T. Moses

Summons Upon Complaint

JUL 23 2014

**HOCKING COUNTY
MUNICIPAL COURT**

FORM VI

TO THE ABOVE NAMED DEFENDANT:

A Complaint, a copy of which is attached hereto, has been filed in the above named court charging you with the following:

2921.44E DERELICTION OF

You are hereby summoned and ordered to appear in this Court on **08/11/2014 at 08:15 AM.**

Date: July 23, 2014

Michele Bell

Clerk of Court

By 

Clerk/Deputy Clerk

TO: Hocking County Sheriff's Office

RETURN OF SERVICE

PERSONAL

Received this writ on _____ at _____ o'clock __m, and served the same by
personal service on _____ at _____

FAILURE OF SERVICE

Received this writ on _____ at _____ o'clock __m, and was unable to serve the
same for the following reason _____

FEES

SERVICE \$

MILES \$

TOTAL \$

By _____

Officer Serving Writ

COPY TO SERVE

HOCKING COUNTY MUNICIPAL COURT
HOCKING COUNTY, OHIO

State of Ohio
/City of Logan/

NO.

CB1400714

FILED

JUL 23 2014

HOCKING COUNTY
MUNICIPAL COURT

David L. Cummin
name
11423 Helber Road
street
Logan Ohio 43138
city state zip

Complainant being duly sworn states that David L. Cummin
defendant

at 16095 Sherman Street Hocking County, Ohio on or about January 10, 2014,
place

did, No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office; to wit: Coroner David L. Cummin did knowingly and recklessly leave Hocking County without any Coroner coverage on January 10, 2014, thus leaving us without a Coroner. Russell Swackhammer died unattended and we had difficulty finding his family physician to have him sign off on the death certificate which was finally done after several hours.

in violation of Section 2921.44E of the Ohio Revised Code.

Dereliction of duty
M-2

Det. Sgt. Ed Downs

Complainant

Sworn to and subscribed before me by Detective Sergeant Ed Downs on July 23, 2014

/ Judge / Clerk / Deputy Clerk /
Hocking County Municipal Court

or

PEACE OFFICER

Authorized To Administer Oaths Pursuant to ORC 2935.08.1

DISCOVERY EXHIBIT F

HOCKING COUNTY MUNICIPAL COURT

1 East Main Street, Logan, Ohio 43138

(740) 385 2250

([HTTP://www.hockingcountymunicipalcourt.com](http://www.hockingcountymunicipalcourt.com))

FILED

JUL 23 2014

**HOCKING COUNTY
MUNICIPAL COURT**

State of Ohio/City of Logan

Plaintiff :

Case No.: CRB 1400715

Vs.

DAVID L CUMMIN

11423 HELBER RD

LOGAN, OH 43138

Judge Frederick T. Moses

:

:

:

Defendant :

Summons Upon Complaint

COPY TO SERVE

FORM VI

TO THE ABOVE NAMED DEFENDANT:

A Complaint, a copy of which is attached hereto, has been filed in the above named court charging you with the following:

2921.44E DERELICTION OF

You are hereby summoned and ordered to appear in this Court on **08/11/2014 at 08:15 AM.**

Date: July 23, 2014

Michele Bell

Clerk of Court

By 

Clerk/Deputy Clerk

TO: Hocking County Sheriff's Office

RETURN OF SERVICE

PERSONAL

Received this writ on _____ at _____ o'clock __m, and served the same by personal service on _____ at _____

FAILURE OF SERVICE

Received this writ on _____ at _____ o'clock __m, and was unable to serve the same for the following reason _____

FEES

SERVICE \$ _____

MILES \$ _____

TOTAL \$ _____

By _____

Officer Serving Writ

HOCKING COUNTY MUNICIPAL COURT
HOCKING COUNTY, OHIO

COPY TO SERVE

State of Ohio
/City of Logan/

NO. CRB 140715

v.

David L. Cummin

name

11423 Helber Road

street

Logan

city

Ohio

state

43138

zip

FILED

JUL 23 2014

HOCKING COUNTY
MUNICIPAL COURT

Complainant being duly sworn states that David L. Cummin

defendant

at Hocking Valley Community Hospital Hocking County, Ohio on or about July 3 to July 6, 2014,
place

did, No public servant shall recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office, or recklessly do any act expressly forbidden by law with respect to the public servant's office; to wit: Coroner David L. Cummin did knowingly and recklessly leave Hocking County without any Coroner coverage between July 3 and July 6, 2014, thus resulting in leaving a decedant lie in the Hocking Valley Community Hospital Morgue from July 3, 2014 at approximately 2pm until July 5, 2014 at approximately 6:30 pm at his direction. This resulted in the Athens County Coroner's Office having to release the body.

in violation of Section 2921.44E of the Ohio Revised Code.

Dereliction of duty
M-2

Det. Sgt. [Signature]

Complainant

Sworn to and subscribed before me by Detective Sergeant Ed Downs on July 23, 2014

/ Judge / Clerk / Deputy Clerk /
Hocking County Municipal Court

or

[Signature]
PEACE OFFICER
Authorized To Administer Oaths Pursuant to ORC 2935.08.1

USPS TRACKING#

9590 9402 1426 5329 7708 62

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States Postal Service

RECEIVED
AUG 18 2016
By

4077

Sender: Please print your name, address, and ZIP+4® in this box®

Brunner Quinn
35 North Fourth Street
Suite 200
Columbus, Ohio 43215

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p>Keller J. Blackburn, Esq. Athens County Prosecuting Attorney 1 South Court Street, First Floor Athens, Ohio 45701</p> <p>9590 9402 1426 5329 7708 62</p> <p>2. Article Number (Transfer from service label) 7016 0750 0001 0993 3252</p> <p>PS Form 3811, July 2015 PSN 7530-02-000-9053</p>		<p>A. Signature X <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Chasity Murphy</i></p> <p>C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Insured Mail <input type="checkbox"/> Insured Mail Restricted Delivery (over \$500) <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation™ <input type="checkbox"/> Signature Confirmation Restricted Delivery </p>	

Domestic Return Receipt